

**PROPOSED RECOMMENDATIONS FOR A LOCAL BANKRUPTCY RULE FOR
FIRST-DAY ORDERS IN CHAPTER 11 BANKRUPTCY CASES**

The Joint Chapter 11 subcommittee considering first-day orders proposes the following concepts for recommendation of a Local Bankruptcy Rule concerning first-day orders in Chapter 11 bankruptcy cases.

The Local Rule concerning the procedures for the submission and entry of first-day orders is necessary in order to ensure the orderly administration of newly filed large Chapter 11 cases and to ensure the uniformity of practice and procedures throughout the District of New Jersey. This will enable both the Court and practitioners to understand the procedures in advance, and ensure that their pleadings and the relief they seek conform to procedures that are uniformly accepted by the Court. Such procedures will clearly enhance the orderly administration and the filing of new large Chapter 11 cases throughout the District.

The proposed Local Rules to implement such procedures are as follows:

1. Upon the filing of a Chapter 11 petition, the Court will conduct a hearing of first-day orders as soon as practicable, but in no event later than two (2) business days after the commencement of the Chapter 11 bankruptcy case(s).

2. The debtor is required to submit in connection with all first-day motions an affidavit or certification of the debtor setting forth the factual predicate for the relief requested in the various first-day motions filed by the debtor.

3. The debtor is required, to the extent practical, to submit a draft of the first-day pleadings to the Office of the United States Trustee at least 24 hours in advance of the filing of the Chapter 11 case(s). At the first-day hearing, the Court will determine what additional noticing procedures, if any, are required.

4. The following is a non-exclusive list of the motions or applications the Court will consider entering an order on the first day:

- (a) Application seeking the joint administration of multiple debtor bankruptcy cases.
- (b) Application for an Order establishing noticing procedures.
- (c) Application for an Order authorizing the emergent use of cash collateral or debtor-in-possession financing pending the noticing and scheduling of an interim hearing for financing pursuant to Bankruptcy Code §§ 363 and 364 and Bankruptcy Rule 4001.
- (d) Application for an Order authorizing the debtor to maintain existing bank accounts and business forms.
- (e) Application for an Order authorizing the debtor to pay pre-petition wages, salaries, compensation, employee benefits and reimbursable business expenses up to the limits set forth in Bankruptcy Code § 507(a).
- (f) Application for an Order authorizing a debtor to modify the investment guidelines set forth in Bankruptcy Code § 345 on an interim basis, providing the United States Trustee's Office and any other parties-in-interest a 60-day period to object to said Order before it becomes a final Order.
- (g) Application for an Order authorizing the debtor to comply with various health and regulatory requirements.
- (h) Application for an Order authorizing the debtor to honor certain pre-petition customer obligations, deposits, rebates, etc.
- (i) Application for an Order authorizing the debtor an extension of time within which to file statements and schedules.
- (j) Application for the entry for an administrative Order establishing procedures for payment of interim compensation and reimbursement of expenses to professionals for the debtor and any statutory committees appointed.
- (k) Application for an Order regarding adequate assurance for the future performance for utilities and establishing procedures for determining requests for additional adequate assurance.
- (l) Application for an Order authorizing the debtor to continue credit card facilities.
- (m) Application for an Order authorizing the debtor to pay pre-petition sales, use, payroll and other taxes that are otherwise priority claims under Bankruptcy Code § 507.

- (n) Application for an Order authorizing the debtor to continue with and pay pre-petition outstanding amounts due on various insurance policies.

5. In connection with the non-exclusive list of first-day motions the Court would consider, the Committee proposes that a standard form of order be utilized for certain of these to ensure uniformity in the District as well as ensure that the relief requested is appropriate. The matters upon which form orders can easily be utilized by the Court and practitioners are as follows:

- (a) Application for an Order regarding the utilities.
- (b) Application for an Order authorizing the payment of pre-petition payroll and other obligations due employees.
- (c) The Administrative Order concerning payment of interim compensation and reimbursement of expenses to professionals.
- (d) An Order for administrative consolidation.
- (e) Order for an extension of the debtor's time in which to file its statement and schedules.
- (f) Order authorizing the debtor to implement its existing cash management procedures.

6. In connection with all motions for the use of cash collateral and financing orders, the following terms and/or conditions must be highlighted in any such motion:

- (a) Whether the proposed financing order and/or cash collateral stipulation and loan agreement contains any provision of the type indicated below in subsection (c).
- (b) Identify the location of any such provision in the proposed form of Order, cash collateral stipulation and/or loan agreement, and
- (c) Justification for the inclusion of the following provisions:
 - (i) Provisions for cross-collateralization (other than replacement liens or adequate protection) to pre-petition secured lenders.

- (ii) Provisions or findings of fact that bind the estate and all parties-in-interest with respect to validity, perfection, the amount of the secured creditors' pre-petition lien or debt or the waiver of claims against the unsecured creditor without first giving parties-in-interest at least 75 days from the entry of the interim order and the Creditors' Committee, if one is formed, at least 60 days from the date of its formation to investigate such matters.
- (iii) Provisions that waive, without notice, whatever rights the estate may have under Bankruptcy Code § 506(c).
- (iv) Provisions that immediately grant to the pre-petition secured lenders liens on the debtor's claims and causes of action rising under Chapter 5 of the Bankruptcy Code.
- (v) Provisions that deem pre-petition secured debt to the post-petition debt or permit the use of post-petition loans from a pre-petition secured creditor to pay part or all of the secured creditor's pre-petition debt, other than is provided for in Bankruptcy Code § 552(b).
- (vi) Provisions that provide disparate treatment for the professionals retained by the creditors' committee from that provided for professionals retained by the debtor with respect to a professional fee carve-out.
- (vii) Provisions that prime any secured lien without the consent of the lienor.
- (d) All financing motions shall also provide a summary of the central terms of the use of cash collateral and/or financing, e.g., the maximum borrowing available on a final basis, interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations, and the specific provisions afforded under Bankruptcy Code § 363 and/or 364.
- (e) A final hearing on a motion for use of cash collateral and/or financing shall be entered only after notice and a hearing pursuant to Bankruptcy Rule 4001. Ordinarily, the final hearing shall be held at least 10 days following the organizational meeting of the Creditors' Committee contemplated by Bankruptcy Code § 1102.

7. That the Court should consider adopting a Local Rule for pre-packaged Chapter 11s.